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and Second Series, Unconditional and Sole Ownership. For other cases, see 6 Va.-W. Va. Enc. Dig. 78.]

13. Insurance (§ 553 (1)*)—Fire Insurance—Proof of Loss—False Statements.—False swearing in proof of loss, to forfeit policy, must consist in an oath to statements knowingly and willfully false or recklessly made.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 103]

14. Appeal and Error (§ 1060 (1)*)—Harmless Error in Restricting Argument.—Error in unduly restricting argument of appellant's counsel on the evidence relating to a certain fact is harmless, where the evidence conclusively establishes such fact contrary to appellant's contention.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 599.]

Burks, J., dissenting.

Error to Hustings Court of Petersburg.

Action by Lavenstein Bros. against the Hartford Fire Insurance Company. Judgment of dismissal, and plaintiffs bring error, and defendant assigns cross-error. Reversed.

R. H. Mann, of Petersburg, and *Henry J. Wyatt,* of New York City, for plaintiffs in error.

Caskie & Caskie, of Lynchburg, and *R. E. Scott,* of Richmond, for defendant in error.

JOHNSON *v.* COMMONWEALTH.

Nov. 20, 1919.

[101 S. E. 341.]

1. Criminal Law (§ 941 (2)*)—Newly Discovered Evidence Not Merely Cumulative Justifies New Trial.—Testimony of a garage keeper that he searched automobile in which liquor was charged to have been transported on the night in question while repairing a tire, but that he saw no liquor, held not merely cumulative, but, even if so considered, to entitle defendant to a new trial, since it was testimony of a disinterested witness in support of defendant alone and was discovered after trial.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 449.]

2. Criminal Law (§ 941 (2)*)—"Cumulative Evidence" No Ground for New Trial.—Evidence is said to be cumulative when it is of the same kind, to the same point, and the discovery of such evidence after verdict is as a rule no ground for a new trial.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 449.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. Criminal Law (§ 945 (1)*)—Newly Discovered Evidence Authorizing New Trial.—The newly discovered evidence must be such as would probably produce a different result on the merits.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 447.]

4. Criminal Law (§ 938 (1)*)—Cumulative Evidence Authorizing New Trial.—If the court can see that a different result on the merits ought or probably would be reached if the evidence is received, the evidence may furnish ground for a new trial, even though it is merely cumulative.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 447]

5. Criminal Law (§ 938 (1)*)—Newly Discovered Evidence Authorizing New Trial.—Where, in the light of the after-discovered evidence, gave doubt is entertained as to the correctness of the verdict, and it seems probable that if the newly discovered evidence had been before the jury a different result would have been reached on the merits, the verdict should be set aside.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 447.]

6. Criminal Law (§ 211 (2)*)—Affidavit Signed in Blank Does Not Authorize Warrant of Arrest.—Instruments signed by prohibition officer, but not sworn to by him and left blank as to the offense, were in no sense affidavits, and justice had no right to issue a warrant based on such papers.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 655.]

Error to Circuit Court, Augusta County.

James N. Johnson was convicted of transporting intoxicating liquor in violation of the prohibition law. His motion for new trial, on the ground of after-discovered evidence was overruled, and he brings error. Reversed.

L. Travis White, Timberlake & Nelson, and *Curry & Curry,* all of Staunton, for plaintiff in error.

The Attorney General for the Commonwealth.

McCLUNG *v.* FOLKS.

Nov. 20, 1919.

[101 S. E. 345.]

1. New Trial (§ 167*)—Diligence Affecting Equitable Action for New Trial.—Where it was to plaintiff's interest to have discovered a survey not included within plaintiff's or defendant's chain of the title to establish a reason for certain attached markings on a tree other than that they marked defendant's survey, the usual search

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.